

**REMARKS**

Claim 11 has been amended based on the disclosure at, e.g., page 17, lines 21-23 and page 23, lines 22-28 and to incorporate recitations of claims 14 and 17. In view of the amendment of claim 11, claims 14 and 17 have been canceled, and claim 13 has been amended. Claims 15 and 16 have been amended to change their dependency in view of the cancellation of claim 14. Claim 20 has been added reciting the elected species. Claim 21 has been added depending on claim 20 and reciting that component (b) is water and glycerin in particular (since component (b) in claim 20 is water and/or polyhydric alcohol, wherein the polyhydric alcohol is water and glycerin). Claim 22 has been added depending on claim 21 and reciting that the surfactin is sodium surfactin (similar to claim 16, except that claim 22 also requires the specific components of claim 21).

Entry of the above amendment is respectfully requested.

**Priority**

On the Office Action Summary, the Examiner has acknowledged Applicant's claim for priority, and has marked box 12)a) but not box 12)a)3. Accordingly, Applicants respectfully request that the Examiner make an appropriate indication in the next communication from the PTO.

**Elected Species and New Claims**

On page 2 of the Office Action, in paragraph 1, the Examiner has acknowledged Applicant's election without traverse of Group II (claims 11-18) and the election of species

wherein R is isoalkyl group having 11 carbon atoms, X is leucine, the polyhydric alcohol is water and glycerin, the tocopherol compound is  $\delta$ -tocopherol and the oil component is polyoxyethylene (20) glyceryl triostearate and glycerin tri-2-ethylhexanoate.

On review of the art cited subsequently in the Office Action, Applicant notes that the Examiner has not found art against the elected species, so Applicant has presented dependent claims 20-22 reciting that patentably distinct species and requests that the Examiner indicate that subject matter as allowable over the art in the next communication from the PTO.

#### **Rejection under 35 U.S.C. 112, Second Paragraph**

On page 3 of the Office Action, in paragraph 3, claims 11-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

In response, Applicant submits that the amended claims satisfy the requirements of 35 U.S.C. 112, second paragraph. In this regard, Applicant notes that amended claim 11 now specifically recites that the anionic surfactant having a lipopeptide structure is surfactin, and no homologue recitation is included.

Thus, Applicant submits that the rejection under 35 U.S.C. 112, second paragraph, has been overcome, and withdrawal of this rejection is respectfully requested.

#### **Rejection under 35 U.S.C. 112, First Paragraph**

On page 4 of the Office Action, in paragraph 7, claims 11-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

In response, Applicant submits that the amended claims satisfy the requirements of 35 U.S.C. 112, first paragraph. In this regard, Applicant notes that amended claim 11 now

specifically recites that the anionic surfactant having a lipopeptide structure is surfactin, which is described beginning at page 8, line 20 in the specification.

Thus, Applicant submits that the rejection under 35 U.S.C. 112, first paragraph, has been overcome, and withdrawal of this rejection is respectfully requested.

### **Anticipation Rejection**

On page 8 of the Office Action, in paragraph 9, claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Kovacs et al (US Patent No. 5,583,105) as evidenced by Mishra et al (US Patent No. 6,284,268).

While Applicant disagrees with the anticipation rejection, to expedite allowance Applicant has amended claim 11 to incorporate recitations from claims 14 and 17, which have not been included in this rejection. Accordingly, Applicant submits that this rejection has been overcome, and withdrawal of this rejection is respectfully requested.

### **Obviousness Rejection**

On page 10 of the Office Action, in paragraph 13, claims 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneda et al (WO 03/013446 A1) in view of Goodman et al (U.S. Patent 4,883,659).

In response, Applicant notes initially that the Examiner appears to consider that preventing against degradation such as oxidation would improve the storage stability of the composition (see the Examiner's discussion of Goodman at page 12, lines 5-7 in the Office Action).

However, Applicant submits that storage stability has a different meaning in the present application.

In particular, Applicant notes that the disclosure at page 23, lines 22-28 indicates that storage stability involves preventing separation of the composition, and Applicant has amended claim 11 to recite that the storage stability comprises preventing separation of the composition.

Thus, Applicant submits that Goodman et al disclose the storage stability against degradation such as oxidation, while storage stability in the present invention includes preventing separation of the composition. Accordingly, Applicant submits that the storage stability in the present case and that in Goodman have different meanings and are not technically related to each other.

Moreover, Applicant submits that neither Yoneda nor Goodman teaches or suggests adding a tocopherol compound in order to improve storage stability involving preventing separation of the composition, as recited in amended claim 11.

Further, it is submitted that claim 12 is additionally unobvious since the amount of tocopherol used in Yoneda is not disclosed.

Applicant notes that Yoneda discloses that tocopherol (or acetate) can be used as an antioxidant but neither teaches a specific additive amount of tocopherol nor discloses any example wherein tocopherol (or acetate) is added. Accordingly, Yoneda et al neither disclose nor suggest an oil-based thickening gel composition comprising a surfactin represented by formula (1) and a tocopherol compound as in the present invention.

Also, while Goodman et al describe that tocopherol and tocopherol acetate can be added as an antioxidant and a stabilizer, Goodman et al does not describe that the addition of

tocopherol and tocopherol acetate improves the storage stability of the oil-based thickening gel composition comprising the surfactin as in the present invention.

Consequently, Applicants submit that the present invention would not have been obvious to one of ordinary skill in the art even if Yoneda et al and Goodman et al were combined.

Further, even if the present invention were *prima facie* obvious (which is not the case for the reasons discussed above), the *prima facie* case would be rebutted because the present invention provides unexpectedly superior results with respect to providing storage stability, including preventing separation, as can be seen from a comparison of the results of the Examples on page 24 in the specification with the corresponding Comparative Examples on page 25 in the specification, particularly in regard to the evaluation over 2 months. In this regard, it is submitted that the Comparative Examples are closer to the present invention than the closest specific Example disclosed in Yoneda, since none of the Yoneda Examples actually used a tocopherol compound.

Thus, it is submitted that the present invention is not obvious over the cited art, and withdrawal of this rejection is respectfully requested.

## Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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